

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

CRP.No. 538 of 2000(I)

AGAINST THE ORDER OF THE TALUK LAND BOARD, MALLAPPALLY IN PROCEEDINGS NO.TLB.95/1976, DATED 28.1.2000.

REVN. PETITIONER:

SMT. ANNAMMA JOHN, VADAKKEPARAMBIL HOUSE,
VALUKKUZHY, EZHUMATTOOR VILLAGE, MALLAPPALLY.
(DIED – LRS. IMPEADED)

ADDL. 2. JOHN ZACHARIAH, VADAKKEPARAMBIL HOUSE,
VALUKKUZHY, EZHUMATTOOR VILLAGE, MALLAPPALLY.

LEGAL REPRESENTATIVE OF THE DECEASED REVISION PETITIONER
IS IMPEADED AS ADDITIONAL PETITIONER NO.2 AS PER ORDER
DATED 12.1.2007 ON I.A.NO.68 OF 2007.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY
TO GOVERNMENT, SECRETARIAT, TRIVANDRUM.
2. SRI.JOHN VARGHESE, KOODATHUM MURIYIL,
VENNIKKULAM, PURAMATTOM VILLAGE,
MALLAPPALLY.

ADDITIONAL RESPONDENTS IMPEADED:

ADDL.3.ZACHARIAH JOHN (D/B-21.7.60),
BUSINESS & ETHNIC TRAVEL CENTRE, TOSTSTRASSE 50/3/302,
1100 WIND, VIENNA, AUSTRIA – EUROPE.

ADDL.4. MARY JACOB (D/B.27.1.1964),
C/O.JACOB THOURAS, SAABA CORPORATION, F.Z.E. P.O.,
BOX NO.41772,SHARJA, U.A.E.

ADDL.5. ALEXANDER JOHN (D/B.19.12.69), ALEXANDER JOHN,
916, LAUREL STREET, NEW WESTMIRSTER, B.C.,
V3L4R4, CANADA.

ADDL.R3 TO R5 ARE IMPEADED AS PER ORDER DATED 12.1.2007
ON I.A.NO.68/07.

R1 BY GOVERNMENT PLEADER SRI.K.G.BHASKARAN
ADV. SMT.K.S.SANTHI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 16/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

I.A.NO.99/2003 IN C.M.P.NO.1091/2000 IN C.R.P.NO.538/2000

DISMISSED

16/11/2007

SD/- K.T.SANKARAN, JUDGE

//TRUE COPY//

AHZ/

K.T.SANKARAN, J.

C.R.P. NO. 538 OF 2000

Dated this the 16th day of November, 2007

ORDER

The revision petitioner is the claimant under Section 85(8) of the Kerala Land Reforms Act, in the proceedings, TLB.95/76, of the Taluk Land Board, Mallappally.

2. The Ceiling Case was originally disposed of by the Taluk Land Board as per its order, dated 30.6.1976, holding that the declarant is not holding any excess land. That order was re-opened by the Taluk Land Board under Section 85(9)(A) of the Kerala Land Reforms Act. After re-opening, the Taluk Land Board passed an order, dated 7.2.1995, holding that the declarant is not in possession of any excess land. Against that order, the State filed C.R.P.No.1149 of 1996. The revision petitioner herein, namely, Annamma John, was the second respondent in that Revision, she having filed the application under Section 85(8), evidently before the order dated 7.2.1995 was passed. This Court disposed of C.R.P.No.1149 of 1996 by the order, dated 9.6.1997, remanding the case to the Taluk Land Board for fresh disposal.

3. After re-opening the case under Section 85(9)(A), the contention raised by the declarant that an extent of 4.69 acres in Sy.No.121/1A4 of Ezhumattoor Village was a rubber plantation as on 1.4.1964, was accepted by the Taluk Land Board. That finding was set aside by this

Court in C.R.P.No.1149 of 1996 and the question was directed to be considered afresh after affording an opportunity of being heard to the parties. An opportunity to adduce further evidence and to produce document was also afforded as per the order in C.R.P.No.1149 of 1996.

4. After remand, the Taluk Land Board by the order impugned found that the petitioner herein has not established that 4.69 acres of land was actually a rubber plantation before 1.4.1964. The application under Section 85(8) of the Kerala Land Reforms Act, filed by the revision petitioner was, therefore, rejected. By the final order, which is impugned in this Revision, there was a direction to surrender an extent of 4.69 acres.

5. Sri.George Cherian, learned counsel appearing for the petitioner, submitted that in view of the Kerala Land Reforms (Amendment) Act, 2005 (Act 21 of 2006), the petitioner is entitled to contend that the extent of 4.69 acres held by her is liable to be excluded from the purview of the ceiling case. The petitioner has purchased this property as per a registered document, on 5.6.1968. As per the Amendment Act 21 of 2006, Section 7E was inserted. Section 7E reads as follows:

“7 E. Certain persons who acquired lands to be deemed tenants:-- Notwithstanding anything to the contrary

contained in section 74 or section 84 or in any other provisions of this Act, or in any other law for the time being in force or in any contract, custom or usage, or in any judgment, decree or order of any court, tribunal or other authority, a person who at the commencement of the Kerala Land Reforms (Amendment) Act, 2005, is in possession of any land, not exceeding four hectares in extent, acquired by him or his predecessor-in-interest by way of purchase or otherwise on payment of consideration from any person holding land in excess of the ceiling area; during the period between the date of the commencement of the Kerala Land Reforms Act, 1963 (1 of 1964), and the date of commencement of the Kerala Land Reforms (Amendment) Act, 2005, shall be deemed to be a tenant.”

In Section 84, sub-section (4) was also inserted, which reads as follows:

“(4) Notwithstanding anything contained in sub-sections (1), (1 A) or (2), or in any judgment, decree, or order of any court, tribunal or other authority, no acquisition of land referred to in section 7E shall be deemed to be invalid, or ever to have been invalid by reason only of the fact that the land so acquired was found included as, or forming part of, the land liable to be surrendered by the transferor as excess land under the provisions of this Act and no suit or other proceedings including proceedings for eviction relating to the said land shall be instituted, maintained or continued in any court or tribunal against any person who is a deemed tenant under section 7E and every such suit or proceedings pending shall stand abated;

Provided that, no ceiling cases wherein excess land has been physically taken over and distributed to landless labourers or reserved for public purposes as provided in this Act shall be reopened.

Provided further that if the Taluk Land Board is satisfied that the transfer of land made by a person, in possession of excess land is calculated to defeat the ceiling provisions, it may take into account the land so transferred in determining his ceiling area and may direct him to surrender such extent of land held or possessed by him.

Provided also that no ceiling cases or proceedings in

which any land has already been surrendered by, or assumed from, a person as excess land before the commencement of the Kerala Land Reforms (Amendment) Act, 2005, shall be reopened.”

6. In view of the provisions of Act 21 of 2006, it is necessary to examine the question whether the petitioner is entitled to the benefit of the Amendment Act. The Taluk Land Board has to consider this question as per the provisions of sub-section (4) of Section 84 of the Act.

7. Accordingly, the order dated 24.2.2000, passed by the Taluk Land Board is set aside and the case is remanded to the Taluk Land Board for fresh disposal to consider the question whether the petitioner is entitled to the benefits of Act 21 of 2006. Petitioner shall be entitled to produce such other documents or other evidence as may be necessary for the disposal of the case. The Taluk Land Board shall afford an opportunity of being heard to the petitioner and shall pass orders expeditiously. It is made clear that the finding of the Taluk Land Board that the extent of 4.69 acres was not a rubber plantation as on 1.4.1964 is confirmed. The Taluk Land Board need consider only the question whether the revision petitioner is entitled to the benefits of Act 21 of 2006.

The Civil Revision Petition is allowed as above.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NO. 538 OF 2000

ORDER

16th November, 2007
